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THE STANDARD-OIL FINE.

BY FRANK D. PAVEY.

ON August 3rd a fine of \$29,240,000 was imposed by the Circuit Court of the United States at Chicago upon the Standard Oil Company of Indiana. The Standard Oil Company of Indiana is a corporation organized under the laws of Indiana with a capital stock of \$1,000,000. This result is one which commands the attention of investors in the shares of any corporation and makes any examination or criticism of the character of the law and judicial procedure under which such an end was attained a matter of public interest.

On February 19th, 1903, Congress passed an act known as the Elkins Law to prohibit rebates, concessions or discriminations in freight rates. This act declares it to be unlawful for any person or corporation to offer, grant or give, or to solicit, accept or receive any rebate, concession or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier whereby such property shall be transported at a less rate than that named in the tariffs filed by the common carrier as required by the Interstate Commerce Act. Every person or corporation guilty of a violation of this law shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars. The person who gives and the person who receives the rebate, concession or discrimination are equally guilty.

Under the Interstate Commerce Act it is the duty of the railroads to file with the Interstate Commerce Commission schedules of their rates and charges which have been established and published in compliance with the requirements of the law.

The Standard Oil Company of Indiana was charged with the acceptance of a *concession* from the Chicago & Alton Railroad

on various shipments of oil from Whiting, Indiana, to East St. Louis, Illinois. The rate paid by the Standard Oil Company was six cents per hundred pounds. The Government charged that the legal rate was eighteen cents. There was no question of a *rebate or discrimination*. The sole question was whether the Chicago & Alton Railroad had properly filed the rate of six cents with the Interstate Commerce Commission so as to make it the lawful rate. The decision of the Court was that it had not. The Standard Oil Company was found guilty of having shipped 1,462 car-loads of oil at the unlawful rate, and each car-load was treated as a separate offence. The Court imposed the maximum penalty of \$20,000 for each of the 1,462 violations of the law; making a total fine of \$29,240,000.

On the trial the Standard Oil Company contended:

First, that the lawful rate was six cents; and, second, that if six cents was not the lawful rate it was the rate issued to the Standard by the Alton as the lawful rate, and that the Standard was justified in believing from the railroad company that six cents was the lawful rate.

The question whether the lawful rate was eighteen cents or six cents depended upon technical points. The Standard Oil Company contended that the eighteen-cent rate was a "class" rate and not a "commodity" rate, and that the eighteen-cent "class" rate was never applied and never intended to be applied to oil. This question was complicated by the filing of rate sheets which fixed rates in part by reference to rate sheets previously filed and in part by new classifications. These details have little interest for the general public and no principle is involved which affects the substantial rights of shippers or investors.

Two questions are presented in the conduct of the trial which are of great interest to all shippers and investors. One is the question of the means which a shipper must employ to ascertain whether a rate issued by the railroad has been properly published and filed at Washington. The other is the question to what extent the wealth of individual stockholders in a corporation shall be made the basis for the computation of fines to be imposed on the corporation.

In support of its second defence the Standard Oil Company called as a witness its traffic-manager who testified that on each

of the three occasions when he received the special billing orders naming the six-cent rate he had inquired of the rate clerk whether the rate had been filed and was informed that it had been. The Standard Oil Company further offered in evidence on the trial certain tariff schedules of the Chicago & Eastern Illinois Railroad for the purpose of showing that during the period covered by the indictment there was available to it and to the general shipping public, an open published lawful rate of six and one-fourth cents over the Chicago & Eastern Illinois Road from Whiting to East St. Louis. This rate was represented to be equal to the six-cent rate by the Alton Road by reason of certain terminal charges to which traffic by that route was subject at East St. Louis. The Court held that this fact was not admissible before the jury upon the question of guilt or innocence. In its decision the Court says:

“The real question here is whether the defendant accepted the concession knowingly, and in determining this it need not be affirmatively shown that the defendant had actual knowledge of the lawful rate. The defendant must be presumed to have known that which a diligent endeavor made by an honest man in good faith to ascertain the lawful rate would have disclosed to him.”

This rule applied to the business of a great company, like the Standard Oil Company, with traffic-managers who devote their time to the study of rates and have unrestricted opportunity and unlimited resources to ascertain whether the rates which they wish to use have been properly filed with the Interstate Commerce Commission at Washington might not work much hardship when well understood. But the practical absurdity of the ruling is manifest when we reflect that it imposes upon every ordinary shipper the responsibility of knowing whether the railroad has performed its duty under the Interstate Commerce Law and properly filed all of its tariff schedules with the Interstate Commerce Commission at Washington. Under this ruling the giving of a rate sheet by a rate clerk of a railroad to the shipper together with the statement that the rates have been properly filed at Washington does not protect the shipper from the commission of a crime under the Elkins Law if as a matter of fact the tariff schedules have not been properly filed. The rate clerk may be telling the truth so far as he knows it. It is not within the province or the power of every rate clerk of a railroad to

know whether all the tariff schedules of his road have been properly filed. He must depend for his information upon some other employee or officer of the road who is charged with the duty of filing the tariff schedules. But the shipper is not protected by acting in good faith upon the information given him by the rate clerk. It becomes his duty to know to a certainty that the tariff schedules fixing the rates which are offered to him have been properly filed at Washington.

When this point was urged upon the Court it was met in this way:

"The Court is not impressed by the doleful predictions of counsel for the defendant as to the hardships upon the honest shipping public to be anticipated from the enforcement of this rule. The honest man who tenders a commodity for transportation by a railway company will not be fraudulently misled by that company into allowing it to haul his own property for less than the law authorizes it to collect. For the carrier thus to deceive the shipper would be to deliberately incriminate itself, to its own pecuniary detriment, which it may safely be trusted not to do."

In these three sentences the Court dodges the logical force and effect of its own ruling. The ordinary honest shipper may trust the railroad and assume that the rates handed out by the rate clerk are lawful rates. But the Standard Oil Company of Indiana may not "assume" that the rates given out officially by the railroad with the statement that they have been properly filed are lawful rates. It must "know." The Court's theory that the railroad may be safely trusted not to deliberately incriminate itself by deceiving the shipper must have received a jar when it learned that the railroad in this case not only deceived the shipper but secured immunity for itself by turning State's evidence to convict the shipper.

Under the decision in this case the merchants and manufacturers of this country transact their business at the risk of a fine of \$20,000 for each separate shipment made by them over any railroad at the rates officially furnished by the railroad as the lawful rates unless they know by personal investigation that the railroad has properly filed its tariff schedules at Washington.

The other point of interest to investors in the stock of every corporation engaged in making shipments of any character over any railroad is the method employed by the Court to determine the amount of fine which it would impose. This method was

novel and introduces a new element into the calculations of all investors. The following is the statement made by the Court of its course on this point :

“For the guidance of the Court in determining the penalty to be fixed in this case, the Court requested counsel to furnish information as to what, if any, corporation held the stock of the defendant Standard Oil Company of Indiana; what the outstanding capital stock of such holding company was; and what its net earnings and dividends were for the three years covered by the indictment.”

Counsel for the Standard Oil Company refused to give this information and thereupon the Court caused subpoenas to be issued requiring the presence before it of the principal officers of the Standard Oil Company of Indiana *and of the Standard Oil Company of New Jersey*. The subpoenas were duly served and the following statement of the result of the examination of these witnesses is found in the decision of the Court:

“On the examination of the president and secretary of the Standard Oil Company of New Jersey, it appeared that a very large proportion of the stock of the defendant Standard Oil Company of Indiana was held by individuals for the stockholders of the Standard Oil Company of New Jersey; that the outstanding capital stock of the Standard Oil Company of New Jersey was approximately one hundred million dollars; that the annual dividends of that company during the three years covered by the indictment were approximately forty per cent., and that the net earnings for the period mentioned were approximately two hundred million dollars.”

From these facts the Court defended the amount of its fine upon the ground that while the Standard Oil Company of Indiana was the nominal defendant the Standard Oil Company of New Jersey with its capital of \$100,000,000 was the real defendant and that the fine was not excessive when measured by the property and income of the Standard Oil Company of New Jersey. It has been the boast of English and American jurisprudence that all men, rich and poor alike, were equal before the law, and yet we find this Court justifying the imposition of an enormous fine upon the ground that the stockholders of the company which must pay the fine are rich enough to sustain the confiscation of their entire investment in the company.

Why may not the same rule be applied to the stockholders of any corporation engaged in making shipments over the railroads?

Let us suppose that any such corporation makes application to a railroad for rates upon shipments in carload lots covering a period of two years and in response to its application is given rates with the information that the tariff schedules have been properly filed with the Interstate Commerce Commission at Washington. After the expiration of two years it is found that the schedules were not properly filed at Washington and that the company has been accepting an unlawful concession and is liable for a fine of \$20,000 upon each separate carload shipped at the unlawful rate. In order to ascertain whether the fine computed at that rate will be excessive the Court will institute an inquiry to ascertain who are the stockholders in the corporation and what is the amount of their property and income. If the Court finds that the stockholders of the corporation have large incomes from other business and other investments it will not consider it excessive to impose a fine equal to the total value of the assets of the corporation which has been convicted of the violation of the rate law upon the ground that they are the real parties in interest and are rich enough to bear the loss.

Investors in the stocks and bonds of all commercial and industrial companies are confronted by the fact that there exists in the statutes of the United States a law which makes it possible for a court to confiscate the entire property of a company in which they are investors as a penalty for the failure of a railroad company to properly file its tariff schedules at Washington.

FRANK D. PAVEY.